

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2852 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHARIBKHAN NAWABKHAN PATHAN

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA with MR MC KAPADIA for Petitioner
MR KC SHAH, LD. AGP for Respondents.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 26/08/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner Sharifkhan Nawabkhan Pathan, brother of the detenu- Nadirkhan alias Babakhan Nawabkhan Pathan, has brought under challenge the detention order dated 27/3/1996 rendered by the respondent no.1 u/S. 3(1) of the Gujarat Prevention of Anti-Social Activities Ac, 1985 (Act No. 16 of 1985), hereinafter referred to as 'the PASA Act'.

2. The grounds on which the impugned order of detention has been passed appear at Annexure-B to the petition. They inter-alia indicate that the detenu by himself and with the aid of his associates has been carrying on criminal and anti-social activities of keeping with him and selling foreign arms without licence and also transporting and selling country liquor. The following offences have been registered in the Shaher Kotda Police Station and DCB Branch of the Ahmedabad City Police Station against him :-

- 1) CR No.426/9 U/Ss. 25/1/B,A, 25/1/C of the Arms Act read with S. 135(1) of the B.P.Act.
(2 Tamanchas, 2 Revolvers made in Pakistan and 1 Pistol) Pistol) valued at Rs.85,000/-. coupled with 80 cartridges and 2 magazines.

Pending in Court.

- 2) CR No.4/96 U/Ss.25/1/B,A. of the Arms Act.
1 Pistol of Foreign made with magazine and 5 cartridges valued at Rs.1,00,000/-.

Investigation in progress.

The following Prohibition cases have been registered against the detenu in Dani Limda Police Station.

Prohibition Cr.No.3/96 u/Ss,66B, 66E &
and 81 of the Bombay Prohibition Act.
375 Litres of country liquor and a Fiat Car.

3. It has been recited that the detenu's anti-social activity tends to obstruct the maintenance of public order and in support of the said conclusion statements of witnesses have been relied upon. They indicate about two incidents, one occurring on 2/3/1996 and second occurring on 27/3/1996. Both the incidents indicate threatening administered to the concerned witnesses, their beating in the public place and rushing at the people collected at the place with revolver leading to the dispersing of the people collected on such occasions.

4. It is on the aforesaid incidents that the detaining authority has passed the impugned order of detention while also relying upon the aforesaid case lodged against the petitioner. The petitioner has been stamped as a boot-legger within the meaning of section 2(b) of the PASA Act, and as a dangerous person under Section 2C of the said Act.

5. I have heard the learned advocate for the

petitioner and the Ld. A.G.P. for the State. The petitioner has challenged the aforesaid order of detention on number of grounds inter-alia on the ground that there is no material to indicate that the detenu's conduct would show that he is habitually engaged in the anti-social activities which can be said to be prejudicial to the maintenance of public order. This is a case of individual incidents affecting law and order and in the facts of the case would not amount to leading to conclusion that the same would affect public order. Reliance has been placed on the following decision of the Apex Court :-

Mustakmiya Jabbarmiya Shaikh v/s. M.M. Mehta, C.P. , reported in 1995 (2) G.L.R. 1268, where the incidents were quoted in paras: 11 and 12 of the citation and it has been submitted that facts of the present case run almost parallel to the facts before the Apex Court in Mustakmiya's case (supra).

6. As said by the Apex Court in the case of Mustakmiya's (supra) there is a marked difference between the detenu's conduct showing that he is habitually engaged in anti-social activities which can be said to be affecting law and order situation and the detenu's conduct showing that he is habitually engaged in the anti-social activities, which can be said to be prejudicial to the maintenance of public order. On comparing the facts before the Supreme Court with the facts in the present case, this is clearly a case of individual incidents affecting law and order and in the facts of the case, the detenu's conduct would not amount to leading to a conclusion that the same would affect public order.

7. In reply Mr. K.C. Shah, Ld. A.G.P. for the State has relied upon a decision in the case of Mrs. Harpreet Kaur Harvinder Singh Bedi v/s. State of Maharashtra and anr., reported in AIR 1992 SC 979. Comparing the facts of the present case with the facts in the case before the Supreme Court, it clearly appears that the decision in Mrs. Harpreet Kaur's case (supra) would not be applicable.

8. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed directly on the strength of decision of Mustakmiya's case (supra), it is not necessary to deal with the other

grounds. Hence, following order is passed :-

9. The impugned order of detention is hereby quashed and set aside. The detenu-Nadirkhan alias Babakhan Nawabkhan Pathan shall be fortherwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

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